

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT FILING OF LCI COMMUNICATIONS,)	
INC. AND PHOENIX NETWORK CORPORATION FOR)	
AUTHORIZATION FOR THE ACQUISITION OF)	
PHOENIX NETWORK CORPORATION BY LCI)	CASE NO. 89-292
COMMUNICATIONS, INC. AND SUBSEQUENT)	
CONSOLIDATION OF PHOENIX NETWORK)	
CORPORATION CHARTER MANAGEMENT)	
INCORPORATED, AND CHARTER NETWORK COMPANY)	
LP)	

O R D E R

On October 3, 1989, LCI Communications, Inc. ("LCI") and Phoenix Network Corporation ("Phoenix") filed a joint application for Commission approval of LCI's acquisition of Phoenix ("Proposed Transaction"), as well as approval of the subsequent consolidation by LCI of Phoenix, Charter Management Incorporated ("Charter Network"), and Charter Network Company LP. On November 10, 1989, LCI filed a waiver of the requirement that the Commission act on the joint application within 60 days pursuant to KRS 278.020(5).

LCI does not provide telecommunications services in Kentucky and in Case No. 10364¹ the Commission found that LCI is not a utility. LCI owns LiTel Telecommunications Corporation which does

¹ Case No. 10364, The Joint Filing of LiTel Telecommunications Corporation, LCI Communications, Inc., and LCI Communications Holdings Co. Respecting the Acquisition of Control of LiTel Telecommunications Corporation and Related Financing Transactions.

provide service in Kentucky.² Phoenix apparently has provided telecommunications services in Kentucky since 1984, but without having filed a tariff with the Commission.³ The Commission issued a Show Cause Order for Phoenix to present evidence on the alleged violation of KRS 278.020 and 278.160.⁴ In that matter Phoenix has agreed to pay a penalty and make refunds for the unauthorized service. Charter Management and Charter Network, which is a limited partnership, do not offer utility services in Kentucky.

PROPOSED TRANSACTION

In the Proposed Transaction LCI will acquire 100 percent of the outstanding shares in Phoenix. LCI also will purchase all of the shares in Charter Management, which is the general partner of Charter Network, and will acquire all of the remaining interests in that limited partnership. After those acquisitions Charter Management will be merged into Phoenix and LCI will transfer to Phoenix all of the remaining interest in Charter Network. Phoenix will then change its name to Charter Network Company. The

² Case No. 10090, The Application of LiTel Telecommunications Corporation for a Certificate of Public Convenience and Necessity to Provide Intrastate Long Distance Telephone Service to the Public in the Commonwealth of Kentucky and for the Establishment of Rates.

³ Phoenix applied for Commission approval to provide telecommunications services in Kentucky in Case No. 89-288, Application of Phoenix Network Corporation for a Certificate of Public Convenience and Necessity to Provide Long Distance Telecommunications Services Statewide as a Reseller Within the Commonwealth of Kentucky.

⁴ Case No. 89-356, Phoenix Network Corporation - Alleged Violation of KRS 278.020 and KRS 278.160

customers of Phoenix will see no change in their charges for service or the services offered after the Proposed Transaction.

APPLICABLE LAW

KRS 278.020(4) applies to the proposed acquisition of Phoenix by LCI inasmuch as Phoenix is under the Commission's jurisdiction by providing telecommunications services within Kentucky. Therefore, Commission approval of that transaction must be obtained. Although Phoenix derives a greater percentage of its gross revenue from business in another jurisdiction, KRS 278.020(5) applies to the acquisition of Phoenix. Based on Phoenix's alleged unlawful operation in Kentucky, the Commission finds that other jurisdictions cannot afford Kentucky ratepayers adequate protection substantially equal to the protection afforded by this Commission. Commission approval of the acquisition of control of Charter Management and Charter Network by LCI is not required because none of those entities are under Commission jurisdiction. The subsequent merger of Charter Management and Phoenix and the dissolution of Charter Network would be exempt activities. KRS 278.020(6)(b).

The Commission finds that LCI has the financial, technical, and managerial abilities to ensure Phoenix's current customers reasonable service after the Proposed Transaction. LCI has much experience in providing telecommunications services and the Proposed Transaction should go unnoticed by the customers of Phoenix. The Commission further finds that the Proposed Transaction is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 278.020(4) and (5) the acquisition of Phoenix by LCI shall be and hereby is approved.

2. Upon the change of name contemplated by Phoenix, an adoption notice shall be filed pursuant to 807 KAR 5:011, Section 11, within 30 days of the date Phoenix changes its name.

Done at Frankfort, Kentucky, this 5th day of January, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director